MARK A. LEMLEY

Stanford Law School (650) 723-4605
559 Nathan Abbott Way
Stanford, CA 94305 mlemley@law.stanford.edu

CURRENT EMPLOYMENT

Stanford Law School, Palo Alto, California

William H. Neukom Professor of Law; Director, Program in Law, Science and Technology 2004 – present
Senior Fellow, Stanford Institute for Economic Policy Research 2013 – present
Visiting Professor Fall 2003
Courses: Patent Law; Intellectual Property and Antitrust; Introduction to Intellectual Property; Advanced Topics in Patents; Remedies; Trademark Law; Intermediary Liability
Research Interests: intellectual property; antitrust; computer and Internet law

Durie Tangri LLP, San Francisco, California

Partner 2009 - present
Litigation, dispute resolution/special master work and client counseling in all aspects of intellectual property, antitrust, and Internet law. District court and appellate practice in patent law, trade secrets, contract and software copyright before the U.S. Supreme Court and the Second, Fifth, Seventh, Ninth and Federal U.S. Circuit Courts of Appeals. Representive clients have included Genentech, Dykes on Bikes, and virtually every significant Internet company, including Amazon.com, Facebook, Google, and Twitter. I have litigated more than 100 cases and argued in the California Supreme Court and 26 times in the federal appeals courts in more than 25 years as a lawyer.

EMPLOYMENT EXPERIENCE

Boalt Hall School of Law, University of California, Berkeley, California

Elizabeth Josselyn Boalt Chair in Law 2003 - 2004
Professor of Law; co-Director, Berkeley Center for Law and Technology 2000 - 2003
Visiting Professor Fall 1998
Lecturer 1993 - 1994
Courses: Introduction to Intellectual Property; Electronic Commerce; Computer Law; Intellectual Property and Antitrust; Patent Law; IP Scholarship Seminar

University of Texas School of Law, Austin, Texas

Marrs McLean Professor of Law 1999 - 2000
Professor 1998 - 1999
Assistant Professor 1994 - 1998
Courses: Antitrust Law; Computer Law; Intellectual Property and Antitrust Law; Introduction to Intellectual Property; Law of the Internet; Patent Law; Regulated Industries

Keker & Van Nest, San Francisco, California

Of Counsel 2001 - 2009
Litigation, dispute resolution/special master work and client counseling in all aspects of intellectual property, antitrust, and Internet law. Representive clients included Comcast,

Genentech, Google, Grokster, Hummer Winblad, Intel, NetFlix, TiVo, and the University of Colorado Foundation.

EMPLOYMENT EXPERIENCE CONTINUED

Fish & Richardson, Menlo Park, California & Austin, Texas
Of Counsel 1995 - 2001
Attorney 1993 - 1994
Litigated, provided expert testimony, counseled clients and served as a mediator in patent, trade secret, copyright, trademark and antitrust cases in the fields of computer software and hardware, telecommunications, biotechnology, and physics. Representative clients included Amicus Communications, Genentech, Mentor Graphics, 3M, Mobil Oil, Nassda, NeoForma, Thermolase, Valentis and Varian

Brown & Bain, Palo Alto, California 1992 - 1993
Attorney
Litigated and counseled clients regarding patent and trade secret law in the fields of telecommunications, semiconductors, and medical devices. Representative clients included EP Technologies and National Semiconductor

United States Court of Appeals, Ninth Circuit, Pasadena, California 1991 - 1992
Law Clerk to Judge Dorothy W. Nelson

EDUCATION

Boalt Hall School of Law, University of California at Berkeley
J.D., 1991. Graduated #1 in class. California Law Review (Articles Editor); Order of the Coif; Industrial Relations Law Journal; Moot Court Board

Stanford University
A.B. with distinction, Economics and Political Science, 1988.

PROFESSIONAL ASSOCIATIONS AND COMMUNITY SERVICE

Principal Investigator on grants from the National Institutes of Health and the National Science Foundation
Co-founder and Member, Board of Directors, Lex Machina, Inc., 2009 – present
Member, American Law Institute, 2012 – present
Co-convenor, OASIS working group on synthetic biology (National Science Foundation grant, 2012)
Obama for America 2008 campaign (fundraiser; served on IP and antitrust policy advisory committees)
Member, Boalt Hall Alumni Association Board of Directors, 2007 – 2010
Chair, Association of American Law Schools Section on Antitrust and Economic Regulation, 2006
Member, California Blue Ribbon Task Force on Nanotechnology, 2004 – 2005
Advisor, American Law Institute “Principles of the Law of Software Contracts” Project, 2004 - 2009
Master, San Francisco Bay Area Intellectual Property Inns of Court
Member, Northern District of California Patent Instructions and Rules Committee, 2000 – present
Moderator, "CyberProf" Internet listserv
Peer reviewer (occasional), American Law and Economics Review; BE Press; California Business Review; Genomics; Information Economics and Policy; Journal of Law, Economics and Organization; Journal of Legal Studies; Jurimetrics Journal; MIT Press; the National Science Foundation; Nature; Oxford University Press; Research Policy; and Science
Member, Program Committee, 2001 and 2002 Telecommunications Policy Research Conferences
ICANN domain name dispute arbitrator (disputes.org/eresolution.ca), 1999-2001
Member, Advisory Board, Electronic Frontier Foundation, 2004-present

Member, Board of Directors, University Cooperative Society ($25 million private non-profit college bookstore), 1995-1999
Member, Panel of Academic Advisors, American Committee for Interoperable Systems, 1995-1999
Member, Board of Editors, American Intellectual Property Law Association Quarterly Journal, 1994-2000

PROFESSIONAL ASSOCIATIONS AND COMMUNITY SERVICE continued

Chair, Association of American Law Schools Section on Law and Computers, 1997
Founder and Coach, Stanford Debate Team, 1985-1988
Admitted to practice in California, before the United States Supreme Court, and in the Second, Seventh, Ninth and Federal Circuit Courts of Appeals as well as numerous federal district courts

AWARDS

Individual

Best Lawyers in America San Francisco IP Attorney of the Year, 2010 (IP), 2013 (patent litigation), 2017 (trade secrets)
Managing IP Magazine, Influential Individual of the Year, 2017
P.J. Federico Award, Patent and Trademark Office Society, 2017
Jerry S. Cohen Memorial Fund Writing Award for outstanding paper on private antitrust enforcement, 2016
California Lawyer's Attorney of the Year (CLAY) Award for Antitrust, 2015
Concurrences Antitrust Writing Award for outstanding antitrust paper, 2014
Managing IP Magazine, IP Thought Leader of the Year, 2012, 2013
Parkway Alumni Association Hall of Fame, 2012
Finalist, World Technology Network's World Technology Award for Law, 2004, 2011
California State Bar inaugural IP Vanguard Award, 2009
California Lawyer's Attorney of the Year (CLAY) Award for Intellectual Property, 2005
Young Alumnus of the Year, Boalt Hall School of Law, 2002

Group

American Academy of Arts and Sciences, inducted 2018
Law360 Icons of IP, 2016
Daily Journal 100 Most Influential Attorneys in California, 2004, 2005, 2006, 2008, 2009, 2011, 2015, 2017
IP Hall of Fame, inducted 2014
Daily Journal Top 75 IP Lawyers in California, every year since 2009
Managing IP Magazine, IP Stars 2014, 2016
National Law Journal, 100 Most Influential Lawyers in the U.S., 2006, 2013
Top 100 Lawyers in Northern California, SuperLawyers, 2013, 2014, 2016
Intellectual Asset Magazine Global Patent 1000, 2012, 2013, 2014, 2015, 2016
Intellectual Asset Magazine Global IP Strategy 300, 2013, 2014, 2015, 2016
Managing IP Magazine, 50 Most Influential People in IP World-wide, 2012
Parkway Alumni Association Hall of Fame, 2012
Best Lawyers in America, recognized as an outstanding lawyer in one or more of antitrust, bet-the-company litigation, IP, patent, and trade secret law every year since 2007
San Francisco Chronicle, San Francisco's Top Attorneys 2011
Chambers 2010, 2011, 2012, 2013, 2014, 2015, 2016 (Patents); 2016 (Patent: Star Individuals)
American Lawyer, The 25 Most Influential People in IP, 2010
IP360's Ten Most Admired IP Attorneys, 2010
Who's Who Legal 2010, 2011, 2012, 2013, 2014, 2015 (Patents), 2016 (Thought Leader)
IP Law and Business Magazine, Top 50 Under 45, 2008
Daily Journal Top 50 IP Lawyers in California, 2008
World Economic Forum Young Global Leader, 2007
Corporate Counsel Magazine Top Lawyers, 2007, 2008, 2009

American Lawyer's Young Litigators Fab Fifty, 2007
Lawdragon 3000 Leading Lawyers in America 2010
Lawdragon 500 Leading Lawyers in America, 2005, 2006, 2007
Northern California SuperLawyers (IP litigation), 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013. 2014
Daily Journal Top 25 Intellectual Property Attorneys in California, 2003
Academic

Thelen Marrin Prize (given to the top student in each graduating class), Boalt Hall School of Law, 1991
John G. Sobieski Prize in Economics, Stanford University, 1988
Truman Scholar, 1986

PUBLICATIONS

Books

3D Printing and Beyond: IP and Regulation (Edward Elgar forthcoming 2018) (co-editor, with Dinusha Mendis & Matthew Rimmer)

Trademarks, Unfair Competition, and Business Torts (Aspen Law & Business 2d ed. 2016), with Barton Beebe, Thomas Cotter, Peter S. Menell, & Robert P. Merges (1124 pages); also 1st ed. 2011 (878 pages)

The Patent Crisis and How the Courts Can Solve It (University of Chicago Press 2009), with Dan L. Burk (220 pages) (also translated into Chinese and Korean); plus paperback edition 2011

IP and Antitrust (Aspen Law & Business, 3d ed. 2016), with Herbert Hovenkamp, Mark Janis, Christopher R. Leslie, & Michael A. Carrier (two volume treatise) (1500 pages); also 2d ed. 2010 with Herbert Hovenkamp, Mark Janis, & Christopher R. Leslie; 1st ed. 2001 with Herbert Hovenkamp & Mark Janis (1300 pages) (also translated into Chinese)

Software and Internet Law (Aspen Law & Business, 4th ed. 2011), with Peter S. Menell, Robert P. Merges, Pamela Samuelson and Brian W. Carver (along with **Teacher's Manual**) (1205 pages); also 3d ed. 2006 (1151 pages), with Peter S. Menell, Robert P. Merges, and Pamela Samuelson; 2d ed. 2003 (1061 pages) (same); and 1st ed. 2000 (1115 pages) (same) (also translated into Chinese)

Intellectual Property in the New Technological Age 2018 (self-published) (two-volumes), with Robert P. Merges and Peter S. Menell (forthcoming) (along with **Teacher's Manual**) (1241 pages); also **2017** edition (self-published, 1247 pages); **2016** edition (self-published, 1156 pages); 6th ed. 2012 (Aspen Law & Business) (1156 pages), also 5th ed. 2010 (1103 pages); Revised 4th ed. 2007, with Robert P. Merges and Peter S. Menell (1239 pages); 4th ed. 2006, with Robert P. Merges & Peter S. Menell (1221 pages); 3d ed. 2003, with Robert P. Merges & Peter S. Menell (1112 pages); 2d ed. 2000, with Robert P. Merges & Peter S. Menell (1224 pages); 1st ed. 1997, with Robert P. Merges, Peter S. Menell, and Thomas M. Jorde (1154 pages) (also translated into Chinese)

Intellectual Property in the New Technological Age: 2018 Statutes (self-published); also **2017 Statutes** (self-published); **2016 Statutes** (self-published); also **2015 Case and Statutory Supplement** (Aspen Law & Business 2015), with Peter S. Menell & Robert P. Merges (764 pages); also **2014 Case and Statutory Supplement** 758 pages); **2013 Case and Statutory Supplement** (720 pages); **2012 Statutory Supplement** (738 pages); **2011 Case and Statutory Supplement** (608 pages); **2010 Case and Statutory Supplement** (590 pages); **2009 Case and Statutory Supplement** (630 pages); **2008 Case and Statutory Supplement** (570 pages); **2007 Statutory Supplement** (536 pages); **2006 Statutory Supplement** (531 pages); also **2005 Case**

and Statutory Supplement (640 pages); **2004 Case and Statutory Supplement** (570 pages); **2003 Case and Statutory Supplement** (522 pages); **2002 Case and Statutory Supplement** (544 pages); also **2001 Case and Statutory Supplement** (532 pages); **2000 Statutory Supplement** (493 pages); **1999-2000 Case and Statutory Supplement** (529 pages); **Intellectual Property: Selected Statutes** (Aspen Law & Business 1997), with Robert P. Merges, Peter S. Menell, and Thomas M. Jorde (380 pages)

Books continued

Antitrust (Gilbert's Law Summaries, 11th ed. 2010), with Christopher Leslie (259 pages). Also 10th ed. 2005, with Christopher Leslie (255 pages); 9th ed. 1996, with Thomas M. Jorde and Robert H. Mnookin (193 pages)

Law Review Articles and Book Chapters

Playful Innovation (in progress), with Jeanne C. Fromer

Unfair Disruption (in progress), with Mark P. McKenna

Remedies for Robots (in draft), with Bryan Casey

Fame, Parody, and Policing in Trademark Law, __ **Michigan State Law Review** (forthcoming 2019)

Privacy, Property, and Publicity, __ **Michigan Law Review** __ (forthcoming 2019)

The Sound and Fury of Patent Activity, __ **Minnesota Law Review** __ (forthcoming 2018), with Robin C. Feldman

How Esential Are Standard-Essential Patents?, 103 **Cornell Law Review** __ (forthcoming 2018), with Tim Simcoe

The Patent Enforcement Iceberg, 98 **Texas Law Review** __ (forthcoming 2018), with Erik Oliver and Kent Richardson

Intelligent Design, __ **Duke Law Journal** __ (forthcoming 2018), with Christopher J. Buccafusco and Jonathan Masur

Law, Virtual Reality, and Augmented Reality, 166 **University of Pennsylvania Law Review** 1051 (2018), with Eugene Volokh

Can a Court Change the Law By Saying Nothing?, 71 **Vanderbilt Law Review** 765 (2018), with Paul Gugliuzza

Is Patent Litigation Efficient?, 98 **Boston University Law Review** 649 (2018), with Robin C. Feldman

Platforms and Interoperability in *Oracle v. Google*, 31 **Harvard Journal of Law and Technology** 603 (2018), with Joseph C. Gratz

The Fruit of the Poisonous Tree in IP Law, 103 **Iowa Law Review** 245 (2017)

Functionality Screens, 103 **Virginia Law Review** 1293 (2017), with Christopher J. Buccafusco), reprinted in 2018 **Intellectual Property Law Review** (forthcoming)

The Real Law of Virtual Reality, 51 **UC Davis Law Review** 51 (2017), with Eugene Volokh

How Often Do Non-Practicing Entities Win Patent Cases?, 32 **Berkeley Technology Law Journal** 235 (2017), with John R. Allison & David L. Schwartz

Did *eBay* Irreparably Injure Trademark Law?, 92 **Notre Dame Law Review** 1793 (2017), reprinted in 2018 **Intellectual Property Law Review** (forthcoming)

Law Review Articles and Book Chapters continued

Expecting the Unexpected, 92 **Notre Dame Law Review** 1369 (2017)

The Surprising Resilience of the Patent System, 95 **Texas Law Review** 1 (2016)

Patent Purchases and Litigation Outcomes, 2016 **Patently-O Patent Law Journal** 15, with Kent Richardson, Erik Oliver, Michael Costa, and James Yoon

Rethinking Assignor Estoppel, 54 **Houston Law Review** 513 (2016)

Ready for Patenting, 96 **Boston University Law Review** 1171 (2016)

Open Letter on Ethical Norms in IP Scholarship, 29 **Harvard Journal of Law and Technology** 339 (2016), with Robin C. Feldman, Jonathan Masur, and Arti Rai

Scope, 57 **William & Mary Law Review** 2197 (2016), with Mark P. McKenna

If You Can't Beat 'em, Join 'em? How Sitting By Designation Changes Judicial Behavior, 94 **Texas Law Review** 451 (2016), with Shawn Miller

Antitrust Arbitration and Merger Approval, 110 **Northwestern University Law Review** 1 (2015), with Christopher R. Leslie

Do Patent Licensing Demands Mean Innovation?, 101 **Iowa Law Review** 137 (2015), with Robin C. Feldman

Our Divided Patent System, 82 **University of Chicago Law Review** 1073 (2015), with John R. Allison & David L. Schwartz

Antitrust Arbitration and Illinois Brick, 100 **Iowa Law Review** 2115 (2015), with Christopher R. Leslie

Faith-Based IP, 62 **UCLA Law Review** 1328 (2015), reprinted in **Intellectual Property Law and Technology Journal** (forthcoming 2016) (Japanese translation)

IP in a World Without Scarcity, 90 **New York University Law Review** 460 (2015), reprinted in 1 **Journal of Intellectual Property Studies** 10 (India) (2017), reviewed in **Regulation**, Fall 2014, at 79.

Does "Public Use" Mean the Same Thing It Did Last Year?, 93 **Texas Law Review** 1119 (2014), reprinted in **Intellectual Property Law Review** (2016)

Understanding the Realities of Modern Patent Litigation, 92 **Texas Law Review** 1769 (2014), with John R. Allison & David L. Schwartz

Does Familiarity Breed Contempt Among Judges Deciding Patent Cases?, 66 **Stanford Law Review** 1121 (2014), with Jennifer Urban & Su Li

The Audience in IP Infringement, 112 **Michigan Law Review** 1251 (2014), with Jeanne Fromer

Taking the Regulatory Nature of IP Seriously, 92 **Texas Law Review See Also** 68 (2014)

A Rational System of Design Patent Remedies, 17 **Stanford Technology Law Review** 219 (2013)

Do Applicant Patent Citations Matter?, 42 **Research Policy*** 844 (2013), with Christopher A. Cotropia & Bhaven Sampat

Law Review Articles and Book Chapters continued

Parody as Brand, 47 **U.C. Davis Law Review** 473 (2013), with Stacey L. Dogan, reprinted in **The Luxury Economy and Intellectual Property: Critical Reflections** 93 (Barton Beebe et al. eds, Oxford University Press 2015), and reprinted in 105 **Trademark Reporter** 1177 (2016)

A Simple Approach to Setting Reasonable Royalties for Standard-Essential Patents, 28 **Berkeley Technology Law Journal** 1135 (2013), with Carl Shapiro

Why Do Juries Decide If Patents Are Valid?, 99 **Virginia Law Review** 1673 (2013)

Missing the Forest for the Trolls, 113 **Columbia Law Review** 2117 (2013), with A. Douglas Melamed, abridged in **Patent Asssertion Entities and Competition Policy** 9 (Danny Sokol ed., Cambridge University Press 2017); winner, ABA Antitrust Writing Award 2014

Software Patents and the Return of Functional Claiming, 2013 **Wisconsin Law Review** 905

The Fractioning of Patent Law, in **Intellectual Property and the Common Law*** 504 (Shyamkrishna Balganesh ed., Cambridge University Press 2013)

Rush to Judgment? Trial Length and Outcomes in Patent Cases, 41 **American Intellectual Property Law Association Quarterly Journal*** 169 (2013), with Clint Martin & Jamie Kendall

Fixing the Patent Office, 13 **Innovation Policy and the Economy*** 83 (2013)

The Regulatory Turn in IP, 36 **Harvard Journal of Law and Public Policy** 109 (2013)

Patent Holdup, the ITC, and the Public Interest, 98 **Cornell Law Review** 1 (2012), with Colleen V. Chien

Examiner Characteristics and Patent Office Outcomes, 94 **Review of Economics and Statistics*** 817 (2012), with Bhaven Sampat

Is Pepsi Really a Substitute for Coke? Market Definition in Antitrust and IP, 100 **Georgetown Law Journal** 2055 (2012), with Mark P. McKenna, reprinted in **Antitrust, Intellectual Property, and High Tech** 183 (Daniel Sokol & Roger Blair eds., Cambridge University Press 2017)

The Dubious Autonomy of Virtual Worlds, 2 **Irvine Law Review** 575 (2012)

Contracting Around Liability Rules, 100 **California Law Review** 463 (2012)

The Myth of the Sole Inventor, 110 **Michigan Law Review** 709 (2012)

Point of Novelty, 105 **Northwestern University Law Review** 1253 (2011)

Industry-Specific Antitrust Policy for Innovation, 2011 **Columbia Business Law Review** 637 (2011)

Tailoring Patents to Different Industries, in **Biotechnology and Software Patent Law: A Comparative Review of New Developments (**Emanuela Arezzo & Gustavo Ghidini eds, Edward Elgar 2011)

Earning Exclusivity: Generic Incentives and the Hatch-Waxman Act, 77 **Antitrust Law Journal*** 947 (2011), with C. Scott Hemphill

The Ongoing Confusion Over Ongoing Royalties, 76 **Missouri Law Review** 695 (2011)

Law Review Articles and Book Chapters continued

Life After *Bilski*, 63 **Stanford Law Review** 1315 (2011), with Michael Risch, Ted Sichelman, and R. Polk Wagner, reprinted in **Intellectual Property Law Review*** (forthcoming 2012)

Who Chooses Open Source Software?, 78 **University of Chicago Law Review** 139 (2011), with Ziv Shafir (National Institutes of Health grant # NGA: 1 R01 HG003769-01)

Patent Quality and Settlement Among Repeat Patent Litigants, 99 **Georgetown Law Journal** 677 (2011), with John R. Allison & Joshua Walker

Is the Sky Falling for the Content Industries?, 9 **Journal of Telecommunications and High Technology Law** 125 (2011), reprinted in http://www.dseneste.dk/index.php/politik/falder-himlen-ned-over-musikbranchen-medier-film-tv-radio-forlag/ (Danish translation)

Can the Patent Office be Fixed?, in **Rules for Growth*** 367 (Robert Litan ed. 2011), reprinted in 15 **Marquette Intellectual Property Law Review** 295 (2011)

Owning Mark(et)s, 109 **Michigan Law Review** 137 (2010), with Mark McKenna

Irrelevant Confusion, 62 **Stanford Law Review** 413 (2010), with Mark McKenna

A Structured Approach to Calculating Reasonable Royalties, 14 **Lewis & Clark Law Review** 627 (2010), with Daralyn J. Durie, reprinted in **Intellectual Property Law Review*** (2011)

Our Bizarre System for Proving Copyright Infringement, 57 **Journal of the Copyright Society*** 719 (2010)

Where to File Your Patent Case, 38 **American Intellectual Property Law Association Quarterly Journal*** 401 (2010), reprinted in **AIPPI-Japan** (2011) (Japanese translation) and in **Chizai Prism** (2011) (Japanese translation)

Examining Patent Examination, 2010 **Stanford Technology Law Review** 2, with Bhaven Sampat, reprinted in 43 **Intellectual Property Law Review*** (2011)

Extreme Value or Trolls on Top? Evidence From the Most-Litigated Patents, 158 **University of Pennsylvania Law Review** 1 (2009), with John R. Allison & Josh Walker

Distinguishing Lost Profits From Reasonable Royalties, 51 **William & Mary Law Review** 655 (2009)

Copying in Patent Law, 87 **North Carolina Law Review** 1421 (2009), with Christopher A. Cotropia

Fence Posts or Sign Posts? Rethinking Patent Claim Construction, 157 **University of Pennsylvania Law Review** 1743 (2009), with Dan L. Burk, reprinted in 42 **Intellectual Property Law Review*** (2010) and in **International Patent Law and Policy: Cases and Materials** (2013)

Antitrust Law and Regulatory Gaming, 87 **Texas Law Review** 685 (2009), with Stacey L. Dogan

Courts and the Patent System, **Regulation**, Summer 2009, at 18, with Dan L. Burk

A Cautious Defense of Intellectual Oligopoly With Fringe Competition, 5 **Review of Law and Economics*** 3 (2009) (reviewing Michele Boldrin & David Levine, **Against Intellectual Monopoly**), reprinted in **Indian Journal of Intellectual Property Law** (2010)

Law Review Articles and Book Chapters continued

California Restrictive Employee Covenants After *Edwards*, 23 **California Labor and Employment Law Review** 3 (2009), with James H.A. Pooley

Is The Patent Office A Rubber Stamp?, 58 **Emory Law Journal** 181 (2008) with Bhaven Sampat, reprinted in **Patent Prosecution** (India) (2009)

The Surprising Virtues of Treating Trade Secrets as IP Rights, 61 **Stanford Law Review** 311 (2008), abridged in **The Law and Theory of Trade Secrecy: A Handbook of Contemporary Research** (Rochelle C. Dreyfuss & Katherine J. Strandburg eds. 2011), and reprinted in **Andean Yearbook of Intellectual Rights** 157 (Peru) (2013) and in **Critical Concepts in Intellectual Property Law** (Robert P. Merges ed. forthcoming 2014)

A Realistic Approach to the Obviousness of Inventions, 50 **William & Mary Law Review** 989 (2008), with Daralyn J. Durie, reprinted in **Nonobviousness and Patents** 35 (India) (2010)

Categorical Analysis in Antitrust Jurisprudence, 93 **Iowa Law Review** 1207 (2008), with Christopher R. Leslie

How to Make a Patent Market**,** 36 **Hofstra Law Review** 257 (2008), with Nathan Myhrvold

Ignoring Patents, 2008 **Michigan State Law Review** 19, reprinted in **The Future of the Patent System** 79 (Japan) (Ryo Shiminami ed. Edward Elgar 2012)

The Trademark Use Requirement in Dilution Cases, 24 **Santa Clara Computer & High Technology Law Journal** 541 (2008), with Stacey L. Dogan, reprinted in **Trademark Dilution: Applications and Implications** (India) 103 (2008)

Are Universities Patent Trolls?, 18 **Fordham Intellectual Property, Media & Entertainment Law Journal** 611 (2008), reprinted in **Academic Patents: Emerging Issues and Challenges** (India) 80 (2008), in **Patent Licensing** (India) (2009), and in **Perspectives on Commercializing Innovation** (Cambridge University Press 2012)

Rationalizing Internet Safe Harbors, 6 **Journal of Telecommunications and High Tech Law** 101 (2007), reprinted in 7 **ICFAI Journal of Cyber Law** (India) 45 (2008), in **Trademarks and Internet** (India) (2009), in **Internet Service Provider Liability: Legal Dimensions** (India) (2008), and in **Copyright for the 21st Century** (Brian Fitzgerald & Benedict Atkinson eds. 2011) (Australia)

A Search-Costs Theory of Limiting Doctrines in Trademark Law, in **Trademark Law and Theory: A Handbook of Contemporary Research** 65 (Graeme Dinwoodie & Mark D. Janis, eds. 2007), with Stacey L. Dogan, reprinted in 97 **Trademark Reporter** 1223 (2007), reprinted in **Technical Protection Measures and Their Legal Implications** (India) (forthcoming 2010), and reprinted in **Trademark Protection: Emerging Concerns** (India) (2009)

A New Balance Between IP and Antitrust, 13 **Southwestern Journal of Law and Trade in the Americas** 237 (2007), reprinted in 7 **ICFAI Journal of International Business Law** 64 (India) (2008), in **Patents vs. Competition: A Legal Debate** (India) (2009), and in **Analisis Economics del Derecho** 289 (Chile) (2017) (Spanish translation)

Rethinking Patent Law's Presumption of Validity, 60 **Stanford Law Review** 45 (2007), with Doug

Lichtman, reprinted in **Patent Examination: A Critical Study** (India) (2009) and in **Regulating Innovation: Competition Policy and Patent Law Under Uncertainty** (Cambridge Univ. Press 2011)

Law Review Articles and Book Chapters continued

Should a Licensing Market Require Licensing?, 70 **Law and Contemporary Problems*** 185 (2007), reprinted in **Agency. Franchising, and Licensing Contracts** (India) (forthcoming 2009)

Grounding Trademark Law Through Trademark Use, 92 **Iowa Law Review** 1669 (2007), with Stacey L. Dogan, reprinted in 98 **Trademark Reporter** 1345 (2008), and in **Beijing Private Law Review** (forthcoming 2014) (Chinese translation)

Patent Holdup and Royalty Stacking, 85 **Texas Law Review** 1991 (2007), with Carl Shapiro

Reply: Patent Holdup and Royalty Stacking, 85 **Texas Law Review** 2163 (2007), with Carl Shapiro

Should Patent Infringement Require Proof of Copying?, 105 **Michigan Law Review** 1525 (2007), reprinted in 7:2 **IFCAI Journal of Intellectual Property Rights** 31 (India) (2008)

The (Unnoticed) Demise of the Doctrine of Equivalents, 59 **Stanford Law Review** 955 (2007), with John R. Allison

The Limits of Claim Differentiation**,** 22 **Berkeley Technology Law Journal** 1389 (2007), reprinted in **Patent Claims: Judicial Interpretation and Analysis** 1(India) (2008)

Should Property or Liability Rules Govern Information?, 85 **Texas Law Review** 783 (2007), with Philip J. Weiser

Ten Things to Do About Patent Holdup of Standards (and One Not To), 48 **Boston College Law Review** 149 (2007), reprinted in 6 **ICFAI Journal of Intellectual Property Rights** (India) 38 (2007) and in **The Standards Edge: Golden Mean** 59 (2007)

Spillovers, 107 **Columbia Law Review** 257 (2007), with Brett M. Frischmann

What the Right of Publicity Can Learn From Trademark Law, 58 **Stanford Law Review** 1161 (2006), with Stacey L. Dogan, reprinted in 39 **Intellectual Property Law Review*** 383 (2007) and in Chinese translation (forthcoming 2010)

Terms of Use, 91 **Minnesota Law Review** 459 (2006), reprinted in **E-Contracts** (India) (forthcoming 2008)

Inherency, 47 **William & Mary Law Review** 371 (2005), with Dan L. Burk, reprinted in 38 **Intellectual Property Law Review*** __ (2006)

The Changing Meaning of Patent Claim Terms, 104 **Michigan Law Review** 101 (2005), reprinted in **Patent Claims: Construction and Drafting** 1 (India) (IFCAI Books 2008)

Patenting Nanotechnology, 58 **Stanford Law Review** 601 (2005), reprinted in 30 **Derecho y Sociedad (Peru)** 287 (2008) (in Spanish) and in **Patenting of Nanotech Inventions: A Debate** (India) (C. Sri Krishna ed. 2007)

Inducing Patent Infringement, 39 **U.C. Davis Law Review** 225 (2005), reprinted in 51:12 **AIPPI Japan** 16 (December 2006) (in Japanese) and in **Patent Infringement: Disputes and Remedial Options** 83 (India) (C. Sri Krishna ed. 2008)

The Merchandising Right: Fragile Theory or Fait Accompli?, 54 **Emory Law Journal** 461 (2005), with Stacey L. Dogan, reprinted in **Trademarks** (Graeme Dinwoodie ed. forthcoming 2011)

Law Review Articles and Book Chapters continued

Quantum Patent Mechanics, 9 **Lewis & Clark Law Review** 29 (2005), with Dan L. Burk

What's Different About Intellectual Property, 83 **Texas Law Review** 1097 (2005), reprinted in **Intellectual Property and Business** (Stephen E. Margolis & Craig M. Newmark eds. forthcoming 2009)

Property, Intellectual Property, and Free Riding, 83 **Texas Law Review** 1031 (2005), reprinted in **Intellectual Property and Business** (Stephen E. Margolis & Craig M. Newmark eds. forthcoming 2009) and in 10 **Private Law Review** 123 (China) (2012) (Chinese translation)

What To Do About Bad Patents, **Regulation**, Winter 2005-06, at 10 (2005), with Douglas Lichtman & Bhaven N. Sampat; reprinted in **IP Law and Business**, January 2006, at 20

A Quick and Inexpensive System for Resolving Digital Copyright Disputes, 23 **Cardozo Arts & Entertainment Law Journal** 1 (2005), with R. Anthony Reese

Unilateral Refusals to License in the U.S., in **Antitrust, Patents and Copyright: EU and US Perspectives** 12 (Francois Leveque & Howard Shelanski eds. 2005), with Herbert Hovenkamp & Mark Janis, reprinted in 2 **Journal of Competition Law and Economics** 1 (2006), and in reprinted in **Intellectual Property and Competition** (Edward Elgar 2011)

Divided Infringement Claims, 33 **American Intellectual Property Law Association Quarterly Journal*** 255 (2005), with Ryan M. Kent, David W. O'Brien, Ashok Ramani, and Robert Van Nest, reprinted in 6 **Sedona Conference Journal** 117 (2005), and reprinted in **Economic Law and Justice in Times of Globalisation** (Mario Monti ed. 2007)

Probabilistic Patents, 19 **Journal of Economic Perspectives*** 75 (2005), with Carl Shapiro, reprinted in **China Technology Law Annual Report 2007** (Huazhong Univ. Press 2008) (Chinese translation)

Designing Optimal Software Patents, in **Intellectual Property Rights in Frontier Industries: Software and Biotechnology** (Robert E. Hahn ed. 2005), with Dan L. Burk, reprinted in **Software Patents: Legal Perspectives** (India) (A.V. Narsimha Rao ed. 2007) and in **Critical Concepts in Intellectual Property Law** (Richard S. Gruner ed. 2013)

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Lead counsel and principal author, Brief Amici Curiae of 50 Intellectual Property Professors in Support of Petitioner, *Samsung Electronics v. Apple Inc.* (U.S. 2016).

Lead counsel and co-author, Brief Amici Curiae of 40 Intellectual Property Professors in Support of Appellant, *Helsinn v. Teva* (Fed. Cir. 2016)

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Conferences Chaired

IP and the Biosciences, Stanford, California April 26, 2018

We Robot, Stanford, California April 12-14, 2018

Patent Law in Global Context, Stanford, California, September 2017

Chair or co-chair, First through Twenty-first Annual Advanced Patent Law Institutes, Palo Alto, California 2000-2017 and Austin, Texas, 1996-2007

The Changing Patent Landscape, Stanford, California, October 7, 2016

The Psychology and Sociology of Creativity and IP, Stanford, California, September 9-10, 2016

IP Scholars' Conference, Stanford, California, August 11-12, 2016

Chair, Stanford Conference on IP and the Biosciences, May 4, 2016

Co-chair, Stanford-ABA Conference on Innovation and Antitrust, Stanford, California October 8, 2015

Chair, The PTO and the Courts, Stanford, California April 17-18, 2015

Chair, Stanford Conference on IP and the Biosciences, May 15, 2014

Chair, Patent Trolls and Patent Reform, Stanford, California March 21-22, 2014

Co-chair, Second through Tenth Annual Ecommerce Best Practices Conference, Stanford Law School, Stanford, California 2005-2013

Chair, Design Patents in the Modern World, Stanford, California April 5-6, 2013

Convenor, Overlaps Between Patent and Copyright Law, American Law Institute, Washington, DC February 21, 2013

IP Scholars' Conference, Stanford Law School, Stanford, California August 9-10, 2012

Co-chair, Patent Institutions Summit, Stanford, California May 21, 2012

Chair, Stanford Conference on IP and the Biosciences, Stanford, California April 27, 2012

Co-chair, Stanford-ABA Conference on Innovation and Antitrust, Stanford, California October 6, 2011

Conferences Chaired continued

Co-chair, Stanford Law School-ABA conference on Antitrust and Innovation, Stanford, California May 20-21, 2010

Co-chair, Stanford Law School Conference on Intellectual Property Law and the Biosciences, Stanford, California May 8, 2009

IP Scholars' Conference, Stanford Law School, Stanford, California August 7-8, 2008

Co-chair, Stanford-Berkeley conference on STS and IP Law, St. Helena, California May 9-10, 2008

Chair, Stanford IP Seminar for Chinese Judges, August 12-21, 2007

Co-chair, Stanford Law School Conference on Intellectual Property and Biosciences, Stanford, California September 15, 2006

Co-chair, "Standardization and the Law: Finding the Golden Mean for International Trade," Stanford Law School, Stanford, California September 22-23, 2005

Co-chair, conference on "Biotechnology & Intellectual Property: Current Controversies," Stanford Law School, Stanford, California March 11, 2005

Chair, Empirical Patent Research Conference, St. Helena, California, February 4, 2005

Chair or co-chair, Eighth through Eighteenth Annual University of Texas Computer Law Conferences, San Francisco, California 2001-2002 and Austin, Texas 1995-2006

Co-chair, Patent System Reform conference, Berkeley, California April 15-16, 2004

Chair, Third Annual Intellectual Property Scholars Conference, Berkeley, California August 8-9, 2003

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Chair, Beyond Microsoft: Antitrust, Technology and Intellectual Property, Berkeley, California March 2-3, 2001

Co-Chair, The Legal and Policy Infrastructure for Global Electronic Commerce, Berkeley, California March 5-6, 1999

Co-chair, Intellectual Property and Contract in Digital Media: The Impact of Uniform Commercial Code Article 2B, Berkeley, California, April 27-28, 1998

Chair, 1998 Computers, Freedom and Privacy conference (CFP98), Austin, Texas, Febuary 18-20, 1998

Congressional and Administrative Testimony and Judicial Education

"The Sharing Economy," presentation to the National Foundation for Judicial Excellence, Chicago, Illinois July 15, 2017

"Patent Infringement, Defenses, and Remedies," presentation, Federal Judicial Center workshop for U.S. District Court Judges, Berkeley, California, May 17, 2017

"Patent Law and Biotechnology," presentation to the Federal Judicial Center program on Law and Genetics, Stanford, California January 20, 2017

Testimony and Judicial Education continued

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"IP and Antitrust," Stanford-AAI conference on the Economics of Competition, Stanford, California August 28, 2015

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"Patent Infringement, Defenses, and Remedies," presentation, Federal Judicial Center workshop for U.S. District Court Judges, Berkeley, California, May 20-21, 2014

"The Top Ten Ways Patent Law Will Change This Year," presentation to the Northern District of California Judicial Conference, Sonoma, California January 29, 2014

"Patent Law and Biotechnology," presentation to the Federal Judicial Center program on Law and Genetics, Stanford, California January 16, 2014

"IP and Antitrust," Stanford-AAI conference on the Economics of Competition, Stanford, California August 24, 2013

"Patent Litigation, What's New, What's Different, and What the Courts Can Do," Ninth Circuit Judicial Conference, San Diego, California July 16, 2013

"Patent Infringement, Defenses, and Remedies," presentation, and panelist, "Patentable Subject Matter," "Design Patents," and "Damages Issues," Federal Judicial Center workshop for U.S. District Court Judges, Berkeley, California, May 22-24, 2013

"Patent Law and Biotechnology," presentation to the Federal Judicial Center program on Law and Genetics, Stanford, California January 20, 2013

"Patent Infringement, Defenses, and Remedies," presentation, and panelist, "Managing Patent Cases" and "Damages Issues," Federal Judicial Center workshop for U.S. District Court Judges, Berkeley, California, May 22-23, 2012

Panelist, "Patent Trolls," Northern District of California Judicial Conference, Monterey, California April 28, 2012

Chair and presenter, sessions on "Patent Validity", and "Infringement and the Doctrine of Equivalents", Stanford IP Seminar for Chinese Judges, Stanford, California May 18-27, 2011

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"Patent Law and Biotechnology," presentation to the Federal Judicial Center program on Law and Genetics, Stanford, California January 21, 2011

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Testimony and Judicial Education continued

"Is There Life After Trinko and Credit Suisse?: The Role of Antitrust in Regulated Industries," testimony before the Subcommittee on Courts and Competition Policy of the Committee on the Judiciary of the U.S. House of Representatives, Washington, DC June 15, 2010

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"Internet Law," panel presentation to the Fourth Circuit Judicial Conference, White Sulphur Springs, West Virginia June 25, 2009

"Patent Infringement, Defenses, and Remedies" presentation to the Federal Judicial Center workshop for U.S. District Court Judges, Berkeley, California, May 27, 2009

"Patent Damages," testimony before the Federal Trade Commission, Berkeley, California May 5, 2009

Panelist, "Hot Topics in Patent Law," Northern District of California Judicial Conference, Yountville, CA April 18, 2009

"The Evolving IP Marketplace," testimony before the Federal Trade Commission, Washington, DC April 17, 2009

"Patent Reform in the Courts and Congress," testimony before the Judiciary Committee of the U.S. Senate, 111th Congress, 1st Session March 10, 2009

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Chair, Intellectual Property Rights and Technology, program for judges of the Karnataka High Court, India, May 13, 2007

"Intellectual Property and Genetics," presentation to Federal Judicial Center Law and the Biosciences Seminar, Stanford, California January 12, 2007

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"Testimony on Patent System Reform: Injunctions and Remedies" before the Intellectual Property subcommittee of the Judiciary Committee of the U.S. Senate, 109th Cong., 1st Sess., June 14, 2005

"Written Description," "Patent Infringement," "Defenses," and "Remedies," presentations to the Federal Judicial Center workshop for U.S. District Court Judges, Berkeley, California, May 25, 2005

Testimony on HR 683 relating to trademark dilution before the Courts, the Internet and Intellectual Property subcommittee of the Judiciary Committee of the U.S. House of Representatives, 109th Cong., 1st Sess., February 17, 2005

Panelist, "Internet Law," presentation to the Ninth Circuit Judicial Conference, San Francisco, California, February 1, 2005

"Claim Construction," "Doctrine of Equivalents," "Willful Infringement," and "Trademark Dilution," presentations to the Federal Judicial Center's National Workshop for District Judges, Philadelphia, Pennsylvania, April 19, 2004; Chicago, Illinois, June 8, 2004; and Seattle, Washington, September 21, 2004

Written testimony on SB 1506 relating to identity of file-sharers before the California Senate Judiciary Committee, April 12, 2004

"Prosecution History Estoppel" and "Subpoenas Under the DMCA," presentations to the Seventh Circuit Judicial Conference, Lake Geneva, Wisconsin, Oct. 15, 2003

"Written Description," "Infringement," "Remedies," and "Scope of Waiver of Attorney-Client Privilege," presentations to the Federal Judicial Center workshop for U.S. District Court Judges, Berkeley, California, May 28, 2003

"Geography and the Internet," presentation to the National Symposium for Federal Appellate Judges, Federal Judicial Center, Washington, DC October 22, 2002

"Claim Construction," "Patent Infringement" and "Patent Remedies", presentations to the Federal Judicial Center program Intellectual Property in the New Technological Age, Berkeley, California, June 19, 2002

Written testimony regarding California SB 1814, relating to monopolization, June 14, 2002

"Intellectual Property Rights and Standard-Setting Organizations," testimony before the Federal Trade Commission and the Antitrust Division of the U.S. Department of Justice, Washington, DC, April 18, 2002

Testimony and Judicial Education continued

"The Role of Patents in Innovation," testimony before the Federal Trade Commission and the Antitrust Division of the U.S. Department of Justice, Berkeley, CA, February 26, 2002

"Internet Jurisdiction" and "Contracts and Preemption," presentations to ABA State Appellate Judicial Conference, Vancouver, BC, July 24, 2001

"Patent Claim Construction," "Written Description" and "Doctrine of Equivalents," presentations to the Federal Judicial Center program Understanding the Landscape of Intellectual Property Law, Berkeley, California, June 20-22, 2001

"Doctrine of Equivalents" and "Willful Infringement," presentations to the Central District of California judicial retreat, Ojai, California, Feb. 2, 2001

"Intellectual Property and Sovereign Immunity," testimony before the Courts and Intellectual Property subcommittee of the Judiciary Committee of the U.S. House of Representatives, 106th Cong., 2st Sess., July 27, 2000

"Patent Claim Construction," "Contract Preemption," and "Internet Jurisdiction," presentations to the Federal Judicial Center program Understanding the Landscape of Intellectual Property Law, Berkeley, California, June 21-23, 2000

"Internet Jurisdiction" and "Contract Preemption," presentations to the Ninth Circuit Judicial Conference, San Diego, California, January 12, 2000

"Intellectual Property and the Challenges Presented by New Technology," presentation to the Federal Judicial Center's National Workshop for District Judges, Baltimore, Maryland, August 19, 1999 and Chicago, Illinois, September 10, 1999

Testimony before the California Senate in support of SB 1146, relating to trade secrets in auto emissions devices, June 22, 1999

Written testimony before the Texas House of Representatives regarding H.B. 22, relating to assignment of an employee's rights in an invention, April 14, 1999

"State Intellectual Property Law and Preemption," presentation to the Federal Judicial Center program Understanding the Landscape of Intellectual Property Law, Berkeley, California, June 19, 1998

Testimony before the Federal Trade Commission on the Joint Venture Guidelines Project, Washington, DC, March 20, 1998

Testimony Concerning the Need for and Effects of H.R. 359, Relating to Patent Term, before the Courts and Intellectual Property subcommittee of the Judiciary Committee of the U.S. House of Representatives, 104th Cong., 1st Sess., Nov. 1, 1995

More than 500 other presentations to conferences, universities, colloquia, academic business executives and bar groups on various issues related to intellectual property, antitrust, computer and Internet law, telecommunications, and electronic commerce, 1994-2018

FACULTY SERVICE

Stanford Law School

Member, Admissions Committee, 2017-18
Member, Tenure Committee, 2009–10, 2013-14 (chair), 2016-17 (chair)
Member, Appointments Committee, 2005–06, 2016-17
Member, Dean Search Committee, 2012
Member, Joint Degrees/Interdisciplinary Programs Committee, 2007-08, 2011–2015
Faculty Advisor, Stanford IP Association, 2009 – present
Member, Clerkships Committee, 2008-11
Member, Committee on Honors, 2008-09
Director, Program in Law, Science and Technology, 2004 – present
Director, LLM Program in Law, Science and Technology, 2004-15
Member, International Programs Committee, 2004-05
Faculty Advisor, Stanford Law and Technology Association, 2004 – present

University of California at Berkeley

Chair, University Dean Search Committee, Haas School of Business, 2001 - 2002

Boalt Hall School of Law

Co-Director, Berkeley Center for Law and Technology, 1999 - 2004
Chair, Faculty Appointments Committee, 2002 – 2003; member, 2000 – 2001
Faculty Advisor, Berkeley Technology Law Journal, 2003 - present
Faculty Advisor, Saul Lefkowitz Trademark Moot Court team, 2000 – 2001
Member, Computer Advisory Committee, 2000

University of Texas System

Judge, UT Student Association Appellate Court, 1995 - 1999
University Hearing Officer, 1995 - 1999
Member, Computer and Information Technology Use Policies Committee, 1996 - 2000
Member, Intellectual Property Committee, 1994 – 2000

University of Texas School of Law

Member, Career Services Committee, 1995 - 2000
Member, Computer Services Committee, 1994 - 2000 (chair, 1997 and 1999)
Member, Library Committee, 1994 - 1996, 1997 - 1999 (chair, 1995 - 1996)
Coordinator, Lectures and faculty colloquia, 1999 - 2000
Faculty advisor, Texas Intellectual Property Law Journal, 1994 – 2000
Faculty advisor, Intellectual Property Law Society, 1994 - 2000
Faculty advisor, Giles S. Rich Intellectual Property Moot Court team, 1995 – 2000